FILE COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1957

No. [redacted]2

OLETA O'CONNOR YATES, PETITIONER,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 20, 1957

CERTIORARI GRANTED JANUARY 13, 1958

No. 13541

United States
Court of Appeals
for the Ninth Circuit.

OLETA O'CONNOR YATES,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

**Appeal from the United States District Court,
Southern District of California,
Central Division.**

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—10-6-52

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

BEN MARGOLIS,
112 West Ninth Street,
Los Angeles 15, Calif.

For Appellee:

WALTER S. BINNS,
United States Attorney;

RAY H. KINNISON,
NORMAN W. NEUKOM,
Assistants U. S. Attorneys,
600 Federal Bldg.,
Los Angeles 12, Calif.

In the United States District Court in and for the Southern District of California, Central Division

No. 22879—Crim.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

OLETA O'CONNOR YATES,

Defendant.

ORDER, JUDGMENT AND CERTIFICATE OF CRIMINAL CONTEMPT

In conformity with Rule 42 (a), Federal Rules of Criminal Procedure, 18 U.S.C.A., I hereby certify that on June 30, 1952, the series of criminal contempts set forth below, consisting of the refusal of the defendant Oleta O'Connor Yates to answer proper and relevant questions put to her on cross-examination, were committed in the actual presence of the Court and were seen or heard by the Court during the trial of the case of United States v. Schneiderman, et al., No. 22131-CD:

Specification I.

Q. Were you ever at the home of Bessie Honig at a state board meeting or any other meeting of the Communist Party when one Leo Kaplan, often referred to as Kappy, was present?

A. Well, I must repeat the answer that I gave a few minutes ago with respect to that question.

The Court: Answer the question, Mrs. Yates.

The Witness: I must decline to do so for the reasons given.

The Court: You refuse to answer the question?

The Witness: Yes, I do. [2*]

The Court: I must hold you again in contempt of court.

Specification II.

Q. (By Mr. Neukom): Is it not true that in the year 1948 one Leon Kaplan, also known as Kappy, was, to your knowledge, and understanding, a member of the Communist Party of the United States?

A. Well, that is the same——

Mr. Margolis: Just a moment. I object to that on the ground it is incompetent, irrelevant and immaterial.

The Court: Overruled. Answer the question.

The Witness: That is the same question as the one just asked in essence, and the answer to it must necessarily be the same.

The Court: By that do you mean you refuse to answer?

The Witness: Yes, I do, your Honor.

The Court: Then I hold you again in contempt of court.

Specification III.

Q. (By Mr. Neukom): How many years have you known one Leon Kaplan?

A. Oh, I met him perhaps seven years ago.

Q. Have you been to many meetings of the Communist Party where he has been present?

*Page numbering appearing at foot of page of original Certified Transcript of Record.

A. This is again the same question, and if you ask it in 20 different forms, if the content is the same, my answer must be the same.

The Court: I instruct you to answer the question, Mrs. Yates. Do you decline to answer the question?

The Witness: I do, your Honor.

The Court: Then I must hold you in contempt of court.

Specification IV.

Q. (By Mr. Neukom): Did you know one Ida Rothstein? A. Yes, I knew Mrs. Rothstein.

Q. For about how many years have you known her? [3]

A. Oh, a great many years—perhaps 15 or 16.

Q. Have you known her in conjunction with your work with the Communist Party of the United States? A. I don't understand that question.

Q. I will reframe it. Did you meet Ida Rothstein in connection with your duties as a member of the Communist Party of the State of California or of the United States?

A. Well, I don't recall when I did meet her, to tell the truth.

Q. Is it not true that Ida Rothstein has for the last five or six years at least been a club chairman or the leader of one or more of the clubs of the Communist Party situated in the City of San Francisco?

A. That is asking me to say that Ida Rothstein is a Communist.

Q. I will ask you that question. Is Ida Rothstein a Communist?

The Witness: I decline to answer it.

Mr. Neukom: Does your Honor——

The Court: You understand that question to be: Is she known to you as a member of the Communist Party?

The Witness: Yes, I do, your Honor.

The Court: Is that the way you understand the question?

The Witness: Yes, I do so understand it.

The Court: You are instructed to answer the question. Do you refuse to answer the question?

The Witness: I do, your Honor.

The Court: Then I must adjudge you again in contempt of the court.

Specification V.

Q. (By Mr. Neukom): Do you know one Hersel or Herschel Alexander? A. I have met him.

Q. Do you know his first name? How is it spelled according to your best understanding and knowledge?

A. Well, I don't know whether it is the same Mr. Alexander you are referring to. I know a Mr. Alexander. [4]

Q. Do you know a Mr. Herschel Alexander who was a member of the California State Committee of the Communist Party for the year 1950?

A. I know a Mr. Hersel Alexander.

Q. Was he a member of the California State

Committee of the Communist Party for the year 1950?

A. Well, that, again, comes into the same category. I can be asked 500 names, and if my identification of these people who are living people who can be hurt by my public identification of them, as they can be, then I cannot answer it. I am willing to name people who may have died, whose families cannot be——

The Court: You do not need to make a speech about it, Mrs. Yates.

The Witness: Well, I would like to explain.

The Court: You have made several speeches and I will ask you to refrain from any further ones. You have said that over and over again. You are instructed to answer the question.

Mr. Margolis: If your Honor please——

The Court: Will you answer the question or not?

The Witness: No, your Honor.

The Court: You decline to answer the question. I must again hold you in contempt of the court. What do you have to say?

Mr. Margolis: I want to object to your Honor's remarks about speeches and move for a mistrial on the ground it was merely an explanation of her position which she has a right to make.

The Court: The jury are instructed to disregard the comments of counsel and of the court. The witness is entitled to make any explanation that she desires to make. I feel we have heard enough of that explanation. I don't care to hear it any more. I do not care to take up the time with hear-

ing it any more. For that reason I asked you to refrain from repeating yourself.

The Witness: Yes.

Mr. Neukom: Pardon me. Had your Honor finished?

The Court: Proceed.

Mr. Margolis: I assume, your Honor, that if she wishes to add to her [5] explanation, she may.

The Court: Yes, if there is something not repeating, she is certainly privileged to do so, as is every witness, if she explains an answer.

* * *

Specification VI.

Q. (By Mr. Neukom): And is it not likewise true that associated with you as a co-member of the California State Committee for the year 1950 was one, the defendant Al Richmond?

The Witness: That I refuse to answer.

Mr. Branton: Just a minute. May her answer be stricken, your Honor, for the purpose of interposing an objection?

The Court: Yes, it may.

Mr. Branton: I want to object, your Honor, to that question, first, on the ground that Mr. Al Richmond has rested his case and this is just an attempt to elicit evidence as to a defendant who has rested his case and who has no chance and no opportunity to meet evidence which is so elicited. So certainly, on this particular phase, the question would be immaterial, irrelevant and improper.

The Court: Please read the question, Mr. Reporter.

(Question read by the reporter.)

The Court: The objection will be overruled. You are instructed to answer the question.

Mr. Branton: Your Honor, then we make a motion for a mistrial at this time on the ground that the court's ruling is allowing into evidence answers to questions which would elicit evidence as to a defendant who has completely rested his case, and would be a denial of due process to that defendant.

The Court: The evidence is offered as to a defendant who has not rested his case, and I will instruct the jury at the proper time as to the effect of evidence, as to limits upon it. Do you have anything further?

Mr. Branton: The question, your Honor, was specifically asked to a defendant Al Richmond and only that defendant, and that defendant has [6] rested his case entirely.

The Court: The question was as to this witness' association with another person and this witness is under cross-examination. She may be asked about her association with other persons if it is relevant.

Mr. Branton: As long as the record has indicated my motion and objection.

The Court: Yes. The motion is denied. And you are instructed to answer the question.

The Witness: I refuse to answer the question.

The Court: I must again hold you in contempt of the court.

* * *

Specification VII.

Q. (By Mr. Neukom): Is it not likewise true that co-associated with you and as a co-member of the California State Committee for the year 1950 there was also a co-member, one Dorothy Healey?

Mr. Branton: I make the same objection, your Honor, as to any information as to Dorothy Healey as I made a few minutes ago as to the defendant Al Richmond.

The Court: The objection is overruled.

Mr. Branton: Then I want to move for a mistrial, your Honor, on the same grounds heretofore advanced in connection with the defendant Al Richmond.

The Court: The motion is denied. Answer the question.

The Witness: I refuse to answer.

The Court: Then I again adjudge you independently and separately in contempt of court.

Specification VIII.

Q. (By Mr. Neukom): Is it not likewise true that for the year 1950 co-associated with you and as a co-member on the California State Committee of the Communist Party there was a co-member, namely, the defendant Frank Spector?

Mr. Branton: I make the same objection, your Honor, as to the defendant Frank Spector as I have heretofore made to the defendants Al Richmond and Dorothy Healey. [7]

The Court: Overruled.

Mr. Branton: I make a motion for a mistrial,

your Honor, on the same grounds as heretofore advanced to the prior defendants.

The Court: Motion denied. Answer the question.

The Witness: I must refuse to answer that question for the reasons heretofore given.

The Court: I again adjudge you in contempt of the court.

Specification IX.

Q. (By Mr. Neukom): Is it not likewise true that for the year 1950 there was associated with you as a co-member of the California State Committee and as a co-member one Ernie Fox, the defendant here?

Mr. Leonard: I object to that question, if your Honor please, on the grounds that the defendant Fox having rested, it is incompetent, irrelevant and immaterial; and it is a denial of due process as to the defendant Fox, and the Government would in effect be permitted to reopen its case against him after the closing of his case, after he has rested and in reliance upon the closing of his case.

The Court: Overruled. Answer the question.

Mr. Leonard: And on behalf of the defendant Fox, and only on behalf of the defendant Fox, at this time I make a motion for a mistrial on the ground that the Government having rested and he having rested, it cannot reopen its case as to him.

The Court: Motion denied.

Defendant Schneiderman: Your Honor, is there any reason why Mr. Neukom cannot ask the witness a list of names he wants to ask, without asking each individual question as to each individual name?

Mr. Neukom: It might be compound.

The Court: You are instructed to answer the question.

The Witness: I refuse to answer the question.

The Court: I must adjudge you again in contempt of the court. [8]

Specification X.

Q. (By Mr. Neukom): Is it not likewise true that in the year 1950 and co-associated with you and as a co-member of the California State Committee for that year 1950 there was Mickey Lima, the defendant here, as a member of that committee?

Mr. Margolis: I object to that question, if your Honor please, on the grounds previously stated with repect to similar questions by Mr. Branton and Mr. Leonard.

The Court: Overruled.

Mr. Margolis: And I hereby move for a mistrial upon the behalf of the defendant Mickey Lima on the grounds previously stated by Mr. Branton and Mr. Leonard.

The Court: The motion is denied.

Mr. Branton: I would also like to object to that question as being compound, your Honor.

The Court: Please read the question, Mr. Reporter.

(Question read by the reporter.)

The Court: Overruled. I will reverse that ruling. It is compound. Sustained.

Q. (By Mr. Neukom): Is it not likewise true that for the year 1950 Mickey Lima, also known as

Albert Jason Lima, was a co-member of the California State Committee for the year 1950?

The Witness: I refuse to answer.

Mr. Margolis: If your Honor please, I object to that upon the grounds previousy stated with respect to the last question and also on the ground that it is immaterial.

The Court: Overruled.

Mr. Margolis: I hereby make a motion for a mistrial on behalf of the defendant Mickey Lima on the grounds last stated, your Honor.

The Court: Motion denied. You will answer the question.

The Witness: I refuse to answer.

The Court: Then I adjudge you again in contempt of the court: [9]

Q. (By Mr. Neukom): When I referred to Mickey Lima, I assume that you understood that I was referring to the one and the same as the defendant Albert Jason Lima? A. Yes, I did.

* * *

Specification XI.

Q. (By Mr. Neukom): Did you know one Celeste Strack? A. Yes, I did.

Q. Do you know where Celeste Strack is now?

A. I haven't any idea where she is now.

Q. Was not Celeste Strack an active member of the Communist Party during the period of time you have been a member of the Communist Party in the vicinity of San Francisco?

Mr. Margolis: Objected to on the ground it is

incompetent, irrelevant and immaterial, and no relation to any issues, merely asking to get more names into the record.

The Court: Sustained as compound.

Q. (By Mr. Neukom): Did you know Celeste Strack in the vicinity of San Francisco?

A. Yes, I did.

Q. And for how many years did you say?

Mr. Margolis: We object to it on the grounds that this is immaterial, no relation to any issue in the case.

The Court: Overruled.

A. Well, I don't remember for sure how long I have known some people. It might be eight years, seven years.

Q. (By Mr. Neukom): Did you know that Celeste Strack was for a number of years state educational director of the Communist Party of the State of California?

The Witness: I refuse to answer.

The Court: You are instructed to answer the question. [10]

The Witness: I still refuse, your Honor.

The Court: I must adjudge you again in contempt of the court.

It Is Ordered, Adjudged and Decreed that the defendant Oleta O'Connor Yates has been found guilty of contempt of Court through refusal to answer questions put to her, after direction by the Court so to answer, to wit, Specifications I to XI above; and

It Is Further Ordered, Adjudged and Decreed

that the said Oleta O'Connor Yates has been found guilty of contempt of Court separately as to each specification hereinbefore numbered Specifications I to XI.

Further proceedings relative to this matter shall be deferred until further order of the Court.

Dated this 8th day of July, 1952.

/s/ WM. C. MATHES,
United States District Judge.

Approved as to Form:

/s/ B. MARGOLIS.

Receipt of Copy acknowledged.

[Endorsed]: Filed July 8, 1952. [11]

[Title of District Court and Cause.]

MINUTES OF THE COURT, AUGUST 8, 1952
SENTENCING

Proceedings:

Further proceedings re criminal contempt and sentencing of the defendant. Defendant and counsel are present. Defendant Yates makes a statement. Counsel and Court make statement. Attorney Margolis moves for reconsideration.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for

a period of one year in a jail type institution to be selected by the Attorney General of the United States or his authorized representative for each of the eleven separate contempts of which the defendant stands convicted herein.

It Is Further Adjudged that the eleven separate one-year jail sentences herein imposed for the eleven criminal contempts of which the defendant stands convicted shall run concurrently and that such concurrent sentences shall commence upon the defendant's release from custody following execution of the five-year sentence of imprisonment imposed August 7, 1952, upon the defendant in case No. 22131 pending in this Court.

EDMUND L. SMITH,
Clerk.

By /s/ P. D. HOOSER,
Deputy Clerk. [12]

District Court of the United States for the Southern District of California, Central Division

No. 22379—Criminal
[18 U.S.C. § 401]

UNITED STATES OF AMERICA,

vs.

OLETA O'CONNOR YATES.

JUDGMENT AND COMMITMENT

On this 8th day of August, 1952, came the attorney for the government and the defendant ap-

peared in person and by counsel, Ben Margolis, Esquire.

It Is Adjudged that the defendant has been convicted of eleven separate criminal contempts [18 U.S.C. § 401] committed in the presence of the court [Fed. R. Crim. P. 42(a)] by wilful refusal to answer eleven questions in disobedience of the order of the court so to do, as shown by that certain "Order, Judgment and Certificate of Criminal Contempt" filed on July 8, 1952, and incorporated by reference the same as if set forth in full in this judgment and commitment; and the court having asked the defendant whether she has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of one year in a jail type institution to be selected by the Attorney General of the United States or his authorized representative for each of the eleven separate contempts of which the defendant stands convicted herein.

It Is Further Adjudged that the eleven separate one-year jail sentences herein imposed for the eleven criminal contempts of which the defendant stands convicted shall run concurrently and that such concurrent sentences shall commence upon the defendant's release from custody following exe-

cution of the five-year sentence of imprisonment imposed August 7, 1952, upon the defendant in case No. 22131 pending in this court.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Filed August 8, 1952.

/s/ WM. C. MATHES,
United States District Judge.

EDMUND L. SMITH,
Clerk.

By /s/ P. D. HOOSER,
Deputy Clerk.

[Endorsed]: Filed August 8, 1952. [13]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of appellant: Oleta O'Connor Yates, 419 Peru Street, San Francisco, California.

Name and address of appellant's attorney: Ben Margolis, 112 West Ninth Street, Room 825, Los Angeles, California.

Offense: Eleven separate criminal contempts (18 U.S.C. Sec. 401) committed in the presence of the

court (Fed. R. Crim. P. 42(a)) by wilful refusal to answer eleven questions in disobedience of the order of the court so to do, as shown by that certain "Order, Judgment and Certificate of Criminal Contempt" filed on July 8, 1952, and incorporated by reference the same as if set forth in full in this judgment and commitment. [14]

Concise statement of judgment or order, date and sentence:

> One year in a jail type institution to be selected by the Attorney General of the United States or his authorized representative for each of the eleven separate contempts of which the defendant stands convicted herein. It Is Further Adjudged that the eleven separate one-year jail sentences herein imposed for the eleven criminal contempts of which the defendant stands convicted shall run concurrently and that such concurrent sentences shall commence upon the defendant's release from custody following execution of the five-year sentence of imprisonment imposed August 7, 1952, upon the defendant in case No. 22131 pending in this court. Judgment dated August 8, 1952, and filed in the Office of the Clerk of the United States District Court for the Southern District of California, Central Division, on August 8, 1952.

Name of institution where now confined, if not on bail: Los Angeles County Jail.

I, the above-named appellant, hereby appeal to

the United States Court of Appeals for the Ninth Circuit from the above-stated judgment and order.

Dated: August 13, 1952.

/s/ BEN MARGOLIS,
Counsel for Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 13, 1952. [15]

[Title of District Court and Cause.]

STIPULATION AS TO RECORD

It Is Hereby Stipulated, Consented and Agreed by and between the attorneys for the appellant and appellee herein, respectively, that the record on appeal herein shall include all the proceedings and evidence in the action, consisting of the following:

1. Order, Judgment and Certificate of Criminal Contempt, filed July 8, 1952.
2. Judgment and Commitment, filed August 8, 1952.
3. Notice of Appeal.
4. Reporter's Transcript of Proceedings in the action herein.
5. This stipulation and any other stipulation hereafter made concerning the record on appeal herein.

It Is Further Stipulated and Agreed by and between counsel for the respective parties herein that either side may refer so far as is pertinent hereto

to portions of the testimony contained in the proceedings entitled United States v. Schneiderman, et al., No. 22131 Cr., [17] in their briefs or arguments on appeal.

Dated: This 29th day of August, 1952.

BEN MARGOLIS,

/s/ BEN MARGOLIS,
Attorney for Appellant.

WALTER S. BINNS,
U. S. Attorney.

By /s/ NORMAN W. NEUKOM,
Attorney for Appellee.

[Endorsed]: Filed September 4, 1952. [18]

In the United States District Court, Southern District of California, Central Division

No. 22,379—Criminal

UNITED STATES OF AMERICA,
Plaintiff,

vs.

OLETA O'CONNOR YATES,
Defendant.

Honorable William C. Mathes, Judge Presiding.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Appearances:

For the Plaintiff:

WALTER S. BINNS,
United States Attorney;

RAY H. KINNISON,
Asst. United States Attorney;

LAWRENCE E. BAILEY,
Spec. Asst. to Attorney General.

For Defendant:

BEN MARGOLIS, ESQ.

Friday, August 8, 1952—11:00 A.M.

The Court: Is it stipulated, gentlemen, that the defendant Yates is present and her counsel?

Mr. Margolis: Yes, your Honor, so stipulated.

Mr. Binns: So stipulated, your Honor.

The Court: Has that certificate which the Government prepared ever been settled? I do not recall now whether that was signed and filed or not?

Mr. Bailey: Your Honor, I believe it was just submitted to the other side and to your Honor to look over. Actually, you see, the certificate could not be. The ordinary way, I think, is to have the judgment, as well as the certificate, all incorporated into one. But we prepared one in which we left out the judgment because we, of course, did not know what the judgment was. That was submitted to your Honor and you just took it, as I understood it.

The Court: Where is the original?

Mr. Bailey: This is the criminal contempt you are talking about, of course?

The Court: Yes.

Mr. Margolis: It is my recollection, your Honor —and it may be in error, that I approved it as to form.

Mr. Bailey: That was the civil contempt, your Honor.

Mr. Margolis: Also on the criminal contempt, your Honor, [2*] it is my recollection.

The Court: That is my recollection, but I do not recall whether I signed it and whether it was filed or not.

Mr. Margolis: That I do not recall, your Honor.

The Court: Was it, Mr. Clerk?

The Clerk: Yes. Here is the original.

The Court: You have a separate proceeding on it?

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

The Clerk: Yes, your Honor.

The Court: I am sorry. If I had left it to the Clerk—well, call that case.

The Clerk: Case No. 22,379—Criminal—United States of America vs. Oleta O'Connor Yates, for further proceedings re criminal contempt.

Mr. Margolis: Ready for the defendant.

The Court: Is it stipulated the defendant and her counsel are present?

Mr. Margolis: So stipulated.

Mr. Kinnison: So stipulate.

The Court: Pursuant to the document entitled: Order, Judgment and Certificate re Criminal Contempt, filed July 8, 1952, this proceeding being conducted to determine what punishment shall be imposed and what further proceedings to be had in this matter, the defendant Oleta O'Connor Yates having been found guilty of contempt—11 separate specifications, are there? [3]

Mr. Binns: Yes, your Honor.

The Court: ——of 11 separate contempts of court for wilful refusal to answer questions in compliance with the orders of the court.

Section 401, Title 18, United States Code, provides that:

> "A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as——
>
> "(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
>
> "* * *

"(3) Disobedience or resistance to its lawful writ, process, order, rule, decree or command."

The defendant Yates is now before the court for determination of the punishment to be imposed. Does she or her counsel have anything to say?

Mr. Margolis: We are ready, your Honor.

I think it would probably be repetitious, as far as I am concerned, to say the things that I have previously said on this matter when the civil contempt was under discussion. I think that my previous statements apply and I will not take the time of the court to repeat them.

Mrs. Yates may have a word or two to say.

Defendant Yates: Your Honor, at the time the citations [4] took place I stated that I had no intent to show disrespect, much less contempt, for the court; and I likewise stated the reasons which impelled me to that course of action.

I believe that those reasons still hold good, my position still holds good, and it would be wasting the time of the court to repeat what has already been stated.

I am ready to be sentenced.

The Court: Does the Government have anything to say?

Mr. Binns: Your Honor, this is a matter which has concerned me a great deal. I am sorry for Mrs. Yates. I have a feeling that she is not exercising her own judgment or determining her own course of action in the action she has taken here.

I feel that she is a person who has accepted discipline of the Communist Party so long that she can't shake off those shackles.

It is a very serious matter, however, I feel, and the processes of justice require that persons should obey the orders of the court; that the court cannot function without evidence and the evidence must come, in our system, from the questions and answers that are legitimately and properly asked and answered.

I just can't agree with her statement that she did not mean to be in contempt of court. I think she was given every opportunity to understand the situation. [5]

Mr. Margolis: Has Mr. Binns finished?

Mr. Binns: Yes, sir.

Mr. Margolis: I would like to say, your Honor, once again, that we have Mr. Binns standing up here and just solely on the basis of his own dictate saying that this is what induced Mrs. Yates to act, rather than her own statement, that she had a sense that she could not injure other people.

I think that this is an improper attempt to influence the court, to prejudice the court against Mrs. Yates; and I think that the court ought to disregard statements of that kind which are not based upon any evidence but are simply based upon the assertion of the United States Attorney. I think we have had enough of that.

Mr. Binns: Your Honor, my feeling was, in making my statement, as I was trying to impress the court, to temper justice with mercy. I had no

feeling of influencing the court to be unduly harsh to Mrs. Yates.

The Court: I had hoped by this time that Mrs. Yates might be willing to purge herself; that she might be prompted to do so.

Anyone can have an appreciation of the sportsmanlike spirit that might prompt a person not to wish to be an informer. All witnesses in court who swear to tell the truth, the whole truth, and nothing but the truth become, in the liberal sense, informers of necessity. [6]

Mr. Margolis: May I be heard for a moment on that, your Honor?

The Court: Yes, you may.

Mr. Margolis: On the question of Mrs. Yates purging herself, the trial having been completed, your Honor, her answering the questions at this point would not in any way affect the administration of justice; it would not aid any jury. It would simply be her doing not even for anything that would aid in the processes of justice, doing the thing which her conscience has said she can't do.

The Court: The only purpose of the purge would be to purge herself to the extent that she bows to the authority of the court.

Contempt is a defiance of the authority of the court and the authority of the court must be vindicated.

It could have no effect upon this proceeding and need not be accepted as a purge, because of the fact that the time has passed, as you point out, Mr.

Margolis, for the administration of justice in this case to be affected by it.

Nonetheless, as I view it, the court, in its discretion, might treat answers now to the questions as a vindication of judicial authority and treat it as purged.

Mr. Margolis: Your Honor, may I—excuse me.

The Court: I take it from the defendant's statement that she is as adamant now as she was the day the questions were [7] put.

Mr. Margolis: Your Honor, may I point out that at the time she did this, obviously she knew that her chances with the jury were not increased by taking this type of a position; that, as a matter of fact, she was risking endangering herself, and she did this on the basis that she could not cause other people to lose their jobs and be persecuted, as she had seen it done.

It seems to me she has already served something like 42 or 43 days—I don't know the exact period but it is something like that—in jail; and in the light of that and in the light of the fact that her motive was not one which would help her in this, was not one which could have helped her in any way, but was one where she felt she would be doing a serious injury to other people—it is not merely a question of being an informer, your Honor, of informing on other people, but where she, in her own conscience, felt that other people who had never done, according to her understanding, anything wrong could be persecuted, could lose their jobs,

that she felt she just could not do this to people who had never done anything wrong, to help herself.

She would have helped herself, I believe, in every way from the standpoint of presenting the matter. She would have helped herself in avoiding the contempt, and in not giving the prosecution the argument that she did not answer [8] all questions she would have helped herself. Her motive was not to help herself, but she felt that these people had never done anything wrong. This is what she believes: That they had never hurt anybody, and yet she might be the one who, by testifying against innocent people, would cause them to suffer such injuries as losing their jobs and of having all sorts of other penalties imposed upon them. And she felt she could not bring herself to do this.

It seems to me that this is one of the situations in which the penalty already imposed ought to be considered adequate.

I am not discussing now the question of your Honor's right to order her to answer the questions, or order this contempt. I am dicussing simply what the penalty ought to be under these circumstances. I hope that is clear to your Honor.

The Court: Yes. It seems to me this is somewhat analogous to a situation where well-meaning young people, some who call themselves Jehovah's Witnesses and others who won't claim conscientious objections to war but who refuse to obey the law. To these, in spirit, they are right; actually, they are anarchists. They defy all law except the law they want to obey.

If we all did that, it would not take much reflection to see where our system would be.

Mrs. Yates, as I view it, is in the position that she will answer the questions, she will obey the orders of the [9] court, in the last analysis, that she feels she should obey and she will defy those which she wishes to not obey.

Mr. Margolis: On that, your Honor, may I respectfully submit that the record is to the contrary. There may have been many questions that were put to her that she may have thought were improper questions, that she may have thought should not be asked in a court of law.

I think, if you asked her about her conscience, she would say many of these questions have no place in a court of law; that would be her opinion. Nevertheless, she proceeded to answer all of the questions, every question that was put, and the only questions she answered, not simply to say "I will make up my mind to every question whether I want to answer it or not," it was not that kind of situation.

The Court: That is the same situation, isn't it, with respect to these Jehovah's Witnesses? They obey all laws of the land except one.

Mr. Margolis: They are trying to help themselves, not somebody else, by that.

The Court: Well, they think they are trying to help all human kind.

Mr. Margolis: But themselves, too, and she had nothing to gain.

The Court: Moreover, they think they are obeying the word of God. [10]

Mr. Margolis: I suppose those factors all should

be given consideration because of that kind of a case.

My point here is, your Honor, that there has already been punishment. I know it was for the purposes of coercion, but jail bars are jail bars whether their purposes are coercive or otherwise, at least to the individual.

To the individual the label placed upon the sentence makes no practical difference, because the effect, the deprivation of liberty, is equally great in one case as in the other.

The only point I am making, your Honor, is that in a situation like this where, actually, your Honor, in his discretion, could even have ruled the other way on the questions—I have authorities to that point and I don't want to argue that because that issue is really not before your Honor at this point—your Honor, in his discretion, could have ruled the other way. And answers to these questions, certainly a refusal to answer, if they affected the outcome at all—and I doubt seriously whether they affected the outcome of this case at all—but if they affected the outcome at all, affected it adversely to this defendant.

And it is not the sort of a situation where a defendant gets on the stand and answers a few questions, but where it comes to questions that are going to be the most damaging, like: "Did you have the gun?" "I refuse to answer it." But it is a situation where she was trying, rightly or wrongly, [11] trying to do what her conscience required her to do. Sometimes that constitutes a violation of law, but

the fact that it is a matter of conscience, the fact that it is a matter in which she gained nothing, the fact that, from the standpoint of the prosecution, the prosecution got exactly what it wanted in this case, are matters that should be taken into consideration, it seems to me, in determining the punishment.

The Court: But, as to some of these matters, Mr. Margolis, without taking the time to pick out which, as to some of them they were people whose remarks were quoted by Government witnesses. Glickson was one, or Ida Rothstein, where a Government witness said that Glickson or Rothstein, as the subchairman, or in some capacity said something damaging to the defense.

On direct examination Mrs. Yates was asked, as I recollect the testimony, in effect: I call your attention to the statements made by some club chairman, Glickson or someone else; does that accord with your understanding of the aims and objectives and program of the Communist Party? And Mrs. Yates would say, in effect, why, that is ridiculous. No one in their right mind who is a member of the Communist Party and knows anything about it would say such a thing.

Now, the Government was entitled on cross-examination to show, if they could, that that person whom Mrs. Yates impliedly said was a very foolish person was a friend of Mrs. Yates of [12] long standing who had worked with her, whatever the proof would show. We do not know. That is the problem, we do not know; so it was more than just a mere refusal to name people.

Mr. Margolis: May I call your Honor's attention to this: With respect to every person she was asked about: "Do you know?" she answered that question.

She was asked: "How long do you know them?" and I think most of them she admitted that her knowing them ran back many years. I don't remember the exact evidence. But I think in some cases, 1937, 1940. She testified freely to her knowing them.

The testimony that they were Communists was in the record. No attempt was made to contradict that testimony.

The only thing that she could have added would have been to say, she, herself, to say they were Communists. Her association with them, the fact that she was a Communist, of course, was not denied. It was asserted on direct examination. The fact she was an official and her association with them was admitted.

It was only when it came to the one question as to which she would in effect be in the position where, if these people lost their jobs, etc., it could be in part attributed to her, that she stopped. These she questioned. She gave them the association.

The point that your Honor made, I think, is a valid one. [13] And frankly, when I discussed this with Mrs. Yates I advised her when I talked, your Honor, I thought that your Honor, in his discretion, could say that the question need not be answered.

I said, if you ordered it answered, it would be a problem of contempt; but that if she decided not to answer—then she said, herself, she wanted noth-

ing to gain by this; that she wanted to answer every possible question as far as she was concerned. And yet, the way your Honor just analyzed the matter, she admitted the very thing, this long association. It would have been just as easy for her to say, if she was trying to protect herself or help herself in the case: "I won't answer any questions about those people." She did not do that, your Honor. She said, "I know them. I have known them since 1937 or 1940." One or two of the people she did not. She said she did not know them.

There is no indication, of course, that any of her answers with respect to those were in any way not truthful answers. So, your Honor, she went an awful long way in actually giving the prosecution what it wanted in this situation from the standpoint of the argument it wanted to make. It was perfectly free to make that argument. In our argument when we argued to the jury, at no time did we try to assert, for example, that these people were not Communists, that there was any evidence they were not Communists. [14]

Our argument was, if those statements were made, if she did not agree with them, and that she ought not to be bound by statements made outside of her presence. That was our argument to the jury. We tried to take no advantages whatsoever by the situation.

As I see the result, her refusal, if anything, to answer questions, she was hurt by it; she was not helped by it in any way.

The Court: Anything further?

Mr. Binns: Nothing further, your Honor.

Mr. Margolis: Nothing further. [15]

The Court: It is the judgment of the court, Oleta O'Connor Yates, you having been convicted of 11 separate contempts of the court for wilful refusal to answer questions in response to the order of the court, that you be committed to the custody of the Attorney-General of the United States or his authorized representatives for imprisonment in a jail type institution to be selected by the Attorney-General of the United States for the period of one year for each of the 11 specifications.

It is further adjudged that the one-year terms of imprisonment imposed for each of the 11 specifications shall commence and run concurrently.

It is further adjudged that the 11 concurrent one-year jail sentences just imposed for criminal contempt shall commence upon your release from custody following execution of the five-year term of imprisonment imposed on August 7, 1952, in case No. 22,131 pending in this court.

You are now committed to the custody of the Marshal to serve those concurrent sentences.

Mr. Margolis: Your Honor, I wish to move at this time for reconsideration and point out one additional factor.

I want to say, your Honor, and I want to be frank with the court, but I am a little sick as to the result of this. I just never for a single instant thought that this could happen. [16]

There have been other cases in which there have been refusals to answer a number of questions, cases of other judges where there was a contempt

of court identical with the one here, with an identical kind of a case.

Judge Medina gave 30 days. Judge Chestnut gave 30 days, your Honor. They felt that that was ample to vindicate the dignity of the court and they took into consideration——

The Court: Not the "dignity," the authority.

Mr. Margolis: Very well, your honor. I substitute the word "authority."

They felt that that was sufficient to vindicate the authority of the court. It seems to me, your Honor, that in this case to impose a sentence of one year on top of a sentence of five years that has already been imposed, and in addition, on top of the 42 or 43 days that have already been served, and in the light of what other judges, whom your Honor must consider as being somewhat reasonable human beings, have imposed is really to select her for unduly harsh and cruel treatment I think is not warranted by the facts and is not warranted by the precedent of other judges, your Honor.

And I think your Honor ought to take into consideration that other judges have not felt that this sort of treatment is necessary in order to vindicate the authority of the court.

The Court: Mr. Margolis, I respect the opinions of other judges. This court will be here on this bench, will be here [17] long after I am gone. I am a servant to vindicate the authority of the court.

I hope Mrs. Yates will yet purge herself. I think, in offering to accept her answers now as a purge is a humane, merciful thing to do under the circumstances.

I am not interested in imprisoning Mrs. Yates. I am interested in vindicating the authority of this court, which I feel must be vindicated when anyone wilfully refuses to obey a lawful order of the court.

If she at any time within 60 days, while I have the authority to modify this sentence under the Rules, wishes to purge herself, I will be inclined even at that late date to accept her submission to the authority of the court.

Mr. Margolis: Your Honor, I just want to say this one thing: There are other things in life besides authority of this court that are important. I am not attacking the authority of this court, the eminence of the court.

But also there is the dignity of human beings that ought to be given some consideration. And I think what this court has done today is to place the dignity of the court above the dignity of human beings; and I think that this actually lowers the dignity of the court rather than raises it.

This is my opinion as to the effect of this kind of a sentence, your Honor.

The Court: Anything further, gentlemen? [18]

Mr. Binns: Nothing further, your Honor.

The Court: Anything further, Mr. Clerk?

The Clerk: That is all on the calendar, your Honor.

The Court: Court will adjourn.

(Whereupon an adjournment was taken in the above-entitled matter.)

[Endorsed]: Filed September 12, 1952. [19]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 18, inclusive, contain the original Order, Judgment and Certificate of Criminal Contempt; Judgment and Commitment; Notice of Appeal and Stipulation Designating Record on Appeal and a full, true and correct copy of Minutes of the Court for August 8, 1952, which, together with copy of reporter's transcript of proceedings on August 8, 1952, transmitted herewith, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to $2.00 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 12th day of September, A.D. 1952.

[Seal] EDMUND L. SMITH,
Clerk.

By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 13541. United States Court of Appeals for the Ninth Circuit. Oleta O'Connor Yates, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed September 15, 1952.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

[Title of Court of Appeals and Cause.]

DESIGNATION OF RECORD ON APPEAL AND CONCISE STATEMENT OF POINTS ON APPEAL

Oleta O'Connor Yates, the appellant herein, hereby designates the entire record to be printed on appeal.

The following is a concise statement of the points on which appellant intends to rely on the appeal:

I.

The sentence imposed is vague and indefinite as to the time of its commencement and is, therefore, void.

II.

Contrary to the contentions of the appellee, service of the sentence, if any, in this matter must be deferred until appellant's release from custody following execution of the five year sentence of imprisonment imposed August 7, 1952, upon the appellant herein in the case of United States of America vs. Schneiderman, et al., in the District Court of the United States for the Southern District of California, Central Division.

III.

The sentence of one year imposed upon appellant is excessive and arbitrary, constitutes cruel and unusual punishment and is a denial of due process of law in violation of the Fifth Amendment of the Constitution of the United States.

IV.

The sentence of one year imposed upon appellant is arbitrary and void in that it was predicated in whole or in part upon the refusal of the appellant to purge herself of contempt after the completion of the trial in which the alleged contempt of refusing to answer questions was committed and, therefore, appellant could no longer purge herself of contempt.

V.

The judgment of contempt was not supported by the evidence and is arbitrary and void in that the questions which appellant refused to answer were incompetent, irrelevant and immaterial and in that her refusal to answer did not impede the course of the trial or deprive the prosecution of anything to which it was entitled.

Dated: September 24, 1952.

Respectfully submitted,

MARGOLIS AND McTERNAN,

By /s/ R. MARGOLIS,

Attorneys for Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed September 25, 1952.

[fol. 42] Minute Entry of Argument and Submission—July 14, 1955. (Omitted in Printing).

[fol. 43] In United States Court of Appeals for the Ninth Circuit

Minute Entry of Order Directing Filing of Opinion and Filing and Recording of Judgment—July 26, 1955

Ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the Clerk, and that a Judgment be filed and recorded in the minutes of the Court in accordance with the opinion rendered.

[fol. 44] In United States Court of Appeals for the Ninth Circuit

No. 13,541

Oleta O'Connor Yates, Appellant,

vs.

United States of America, Appellee

Opinion—July 26, 1955

Upon Appeal from the United States District Court
for the Southern District of California
Central Division

Before: Stephens, Fee and Chambers, Circuit Judges
James Alger Fee, Circuit Judge:

On July 8, 1952, an order, judgment and certificate of criminal contempt was entered as to Oleta O'Connor Yates upon eleven specifications of refusal to respond to questions put to her on cross-examination after a direction by the court while she was a witness in the trial of the case entitled on the records of that court United States vs. Schneiderman, et al., No. 22131-C.D. This certificate recited these

refusals "were committed in the actual presence of the Court and were seen or heard by the Court."

After the sentence of five years in the principal case was imposed upon Mrs. Yates on August 7, 1952, in the main case in which she was a defendant (Yates vs. United States, — F. 2d —), she was in custody thereunder, together with the other convicted defendants. The court held a hearing on August 8, 1952, at which she was present, personally, and was represented by counsel. Based upon the "order, judgment and certificate of criminal contempt" of July 8 under 18 U.S.C.A. § 401, hereinabove referred to, the court adjudged Mrs. Yates had been convicted of eleven separate criminal contempts therein set out. The defendant was thereupon committed to the custody of the Attorney Gen- [fol. 45] eral of the United States for one year for each of such contempts. These sentences were made to run concurrently with each other, but all were made to take effect upon the release of defendant from custody following execution of the five year sentence of imprisonment imposed August 7, 1952, upon this defendant in Case No. 22,131, United States vs. Schneiderman.

Appeal was taken from this judgment of criminal contempt on August 13, 1952.

The proceedings of the court were fair and in accordance with the precedents. There was due process at every stage. When the matter came on for hearing the day after sentence in the main case, the court had power to impose appropriate sentence for the contempts specified in the order of July 8.

There was a lapse of time between the commission of the disobedience of the order in open court and the entry of the judgment establishing each refusal as a criminal contempt on July 8 and the entry of sentence on each of the contempts on August 8. It is now well established practice for the trial judge to reserve punishment of contempts by participants in a criminal trial. The dangers surrounding such procedure are not legal in nature, but arise in policy. None was apparent here.

A point was made in the trial court that, since defendant was in custody after June 26, when she was committed, until she had given answer to four questions which were propounded to her upon that date, the time so spent should have

been applied in mitigation of this punitive sentence. But that measure applied only to the four questions, as noted above, propounded on that date. These eleven questions, each of which was propounded upon June 30, constitute incidents separate and distinct from the first four. Furthermore, verdicts of guilty were returned in the main case against Mrs. Yates and the other defendants on August 6, and she was held in jail on that charge pending sentence. The custody on the first contempt charge ended with the discharge of the jury. Neither the coercive custody on the first contempt charge nor yet confinement after verdict upon the main charge was relevant to the criminal sentences here.

The main contention of defendant is that, when this punitive sentence was imposed, it was no longer possible for [fol. 46] defendant to purge herself because the trial had ended and that it is improper for the court to use criminal contempt as a coercive rather than a punitive proceeding.

While it is true the court did speak of his disposition to release the defendant from the adjudication of contempt on these specifications in the event she bowed to the authority of the court, this was a suggestion of grace. It must be clearly recognized that it was no longer possible for the situation to be restored so that she could testify. In another proceeding as to other contempts, the trial judge indicated his opinion that he had power to imprison defendant until the questions there were answered. In this proceeding, there was no attempt at coercion to require the answers.

The persistent and recalcitrant refusal to bow to the authority of the august tribunal, even when offered grace after the trial was over, is highly illuminating.

The next contention of defendant takes color therefrom. Defendant, notwithstanding her defiance of the orders of the court and her refusal of grace, insists that the sentence of one year is excessive and arbitrary, constitutes cruel and unusual punishment and is a denial of due process of law in violation of the Eighth and Fifth Amendments to the federal Constitution.

The defendant had been committed for coercive purposes on June 26 to compel her answers to certain questions. Four days later, while still in custody and still under cross-

examination, she committed the contempts certified in this case by refusal to answer other questions. The trial judge found from her own statement in open court on the day of sentence that "she is as adamant now as she was the day the questions were put."

The processes of justice require that all witnesses in a criminal case should obey the legal orders of the court. These processes cannot function without evidence adduced by legitimate questions and answers thereto.

In our system, there is an impregnable bastion erected to protect a defendant not only against self incrimination, but even against a compulsion to testify. As long as a defendant remains within the barbican of this guarantee, protection is absolute. The prosecutor cannot comment on this silence.

[fol. 47] All the defendants in this case except Mrs. Yates accepted this protection. She voluntarily waived it. She knew the rule. She knew if she testified in order to attempt to clear herself and the other defendants, that she would be asked if they belonged to the Communist Party.

The various suggestions now made that the questions were not material, that the failure to answer did no harm, that she and the other defendants were convicted in any event are creations of straw. Technically, the questions were proper and material.

Her own alleged reasons are of no more validity. She said:

> "Well, I am quite prepared to discuss anything that I did, anything that I said, but I am not willing to provide names and identities of people other than those that I have indicated, because I believe that in the case of the other defendants their case is already rested and I would only be contributing toward adding to the prosecution case against them, and I think that that would be becoming a government informer and I cannot do that.
>
> "• • •
>
> "The Court: You are instructed, Madam, to answer that question.
>
> "The Witness: I understand, your Honor. And for the reasons I have given, because I just will not be an in-

former, I will not play the role of a witness for the Government, and I will not add to the prosecution's case against people who have rested, who are defendants and who are putting on no further defense. I am sorry, your Honor, I cannot answer that question.

"The Court: You understand the possible consequences of your refusal to answer, I take it?

"The Witness: I am afraid I do, but the possible consequences, grim as they may be, are not as bad as going around hanging your head in shame for the rest of your life, because you will not be an informer.

"• • •

"The Witness: Well that is a question which, if I were to answer, could only lead to a situation in which a [fol. 48] person could be caused to suffer the loss of his job, his income and perhaps be subjected to further harassment, and in a period of this character, where there is so much witch-hunting, so much hysteria, so much anti-communism, I am sorry I cannot bring myself to contribute to that.

"• • •

"However many times I am asked and in however many forms, to identify a person as a communist, I can't bring myself to do it, because I know it means loss of job, I know that it means persecution for them and their families, I know that it even opens them up to possible illegal violence, and I will not be responsible for that. I will not do it.

"• • •

"As I stated this morning, I would again be putting myself in the role of a government informer if I were to start discussing any of the questions that pertain to defendants who have rested their case, and do not propose to put on any further defense, and for that reason I refuse to answer.

"• • •

"A. No. I am sorry I can't for the same reasons that I advanced last week. I feel that these people are in a position where my identification of them as Communists would do them an inestimable amount of damage. I am willing to give names of people whom I know I cannot hurt, but where it is a question of damaging their

interests, of harming their ability to make a livelihood, of hurting their families, No.

"Q. People that are employed by the Communist Party would not be discharged, would they, by having their names revealed?

"A. People who may be employed by the Communist Party would not be discharged by having their names revealed, but members of their families can suffer the results of it in many different ways.

"• • •

"Well, that, again, comes into the same category. I can be asked 500 names, and if my identification of these people who are living people who can be hurt by my public identification of them, as they can be, then I [fol. 49] cannot answer it. I am willing to name people who may have died, whose families cannot be • • •."

It must be remembered she was being asked about persons with whom she was charged as a co-conspirator in agreement to teach and advocate the overthrow and destruction of the government of the United States by force and violence as speedily as circumstances would permit. A defendant who chooses to take the stand cannot pick and choose the questions to which he will give answer. A person accused of murder jointly with another who is alleged to have actually done the killing cannot refuse to answer as to association or acts of the latter on the ground that he would hang his head in shame if he testified for the government against a person he thought unjustly accused. The guarantee against being required to testify would be turned into a sword instead of a shield.

The court had a right to take into consideration the defiant and recalcitrant attitude of defendant in assessing the penalty. A defendant in an ordinary criminal case who attempted so to protect his confederates would be dealt with severely, and necessarily so. It is far from our thought that a trial court cannot maintain its essential authority where the deliberate defiance arises from loyalty to political confederates or the religion of communistic determinism.

The sentence was severe. Its control is not in our province. It certainly indicates no abuse of discretion. It is true the vindication of the authority of the court would

have been better subserved by an immediate commitment rather than confinement after release on the sentence in the main case. This Court has no power to control the discretion of the trial judge in this respect either. [1]

Affirmed.

[File endorsement omitted.]

[fol. 50] IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 13,541

OLETA O'CONNOR YATES, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee

JUDGMENT—July 26, 1955

Appeal from the United States District Court for the Southern District of California, Central Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the Judgment of the said District Court in this cause be, and hereby is affirmed.

[File endorsement omitted.]

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[1] United States vs. Bollenbach, 2 Cir., 125 F.2d 458, 459.

[fol. 51] In United States Court of Appeals for the Ninth Circuit

Minute Entry of Order Denying Petition for Rehearing —November 2, 1955

On consideration thereof, and by direction of the Court, It is Ordered that the petition of Appellant, filed August 24, 1955, and within time allowed therefor by rule of Court for a rehearing of the above cause be, and hereby is denied.

[fol. 52] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 53] Supreme Court of the United States, October Term, 1955

No. 547

[Title omitted]

Order Allowing Certiorari.—Filed January 16, 1956

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted, and the case is assigned for hearing immediately following Nos. 308, 309, and 310.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.